

Teamsters Local No. 222 and Geneva Rock Products, Inc. and Operating Engineers, Local Union No. 3. Case 27–CD–231

November 30, 1998

DECISION AND DETERMINATION OF DISPUTE
BY MEMBERS FOX, LIEBMAN, AND HURTGEN

The charge in this 10(k) proceeding was filed on June 18, 1998, by Geneva Rock Products, Inc., the Employer, alleging that Teamsters Local No. 222 (Teamsters) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by International Union of Operating Engineers, Local No. 3, AFL–CIO (Operating Engineers).

On July 20, 1998, the Employer, Teamsters, and Operating Engineers filed a stipulation of facts. The parties waived a hearing and issuance of a decision by a hearing officer and indicated their desire to submit this case directly to the Board for a decision and determination of dispute. The parties also agreed that the charge and the stipulation of facts with attachments constitute the entire record before the Board. The parties further waived their right to submit additional briefs. On July 16, 1998, the proceeding was transferred to the Board.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board, having duly considered this matter, approves the stipulation of facts and, on the entire record, makes the following findings.

I. JURISDICTION

Geneva Rock Products, Inc. is a Utah corporation engaged in the production of asphalt, concrete, and related products in the construction industry. It annually purchases and receives goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Utah.

The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Teamsters and Operating Engineers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer is engaged in road construction in Utah. Both Teamsters and Operating Engineers have long-standing collective-bargaining relationships and current collective-bargaining contracts with the Employer. Article VII of the contract between the Teamsters and the Employer identifies the “distributor [sic] truck” as a covered unit classification. The Employer has three distributor trucks. In the Employer’s operations, a distributor truck spreads heated tack oil on a road before asphalt is

laid. It is undisputed that the Employer has for many years assigned employees represented by Operating Engineers to operate the distributor trucks.

This work dispute began in about May 1996. Steve Kappas, a truckdriver in the Teamsters unit, bid for a distributor truck position during the annual bidding under the Teamsters collective-bargaining agreement. The Employer denied his bid on the ground that the bidding procedure did not encompass the position. Thereafter, Kappas filed a grievance, which the Employer denied. The Employer filed an unfair labor practice charge against the Teamsters on June 4, 1996, in Case 27–CD–230, and a 10(k) hearing was held before a Board hearing officer on July 23, 1996.

By decision dated December 27, 1996, the Board quashed the notice of hearing in Case 27–CD–230, finding that there was no evidence of coercion within the meaning of Section 8(b)(4)(ii) of the Act and, therefore, no reasonable cause to believe that Section 8(b)(4)(D) of the Act had been violated.¹ The Board did not determine the merits of the work dispute.²

Subsequent to the 10(k) hearing, the Employer entered into new collective-bargaining agreements with the Teamsters and Operating Engineers. These agreements contain no changes relative to the disputed work. The Employer has continued to assign all of the disputed work to employees represented by the Operating Engineers.

By letter dated June 9, 1998, the Teamsters’ attorney notified the Employer that unless the distributor truck work was immediately assigned to employees represented by the Teamsters, he would advise the Teamsters to commence economic action against the Employer. The Employer has continued to assign the disputed work to employees represented by the Operating Engineers.

B. *The Work in Dispute*

The disputed work involves the operation of the distributor truck during the Employer’s asphalt paving procedure.

C. *Contention of the Parties*

The Employer and Operating Engineers contend that the work in dispute should be assigned to employees represented by the Operating Engineers based on the collective-bargaining relationship between the Employer and the Operating Engineers, the Employer’s preference and past practice, area and industry practice, and efficiency and economy of operations.

¹ *Teamsters Local 222 (Geneva Rock Products)*, 322 NLRB 810 (1996).

² The parties have stipulated that their respective positions have been adequately set forth in the 10(k) hearing in Case 27–CD–230 and in the briefs filed with the Board in that case. The parties further stipulated that the transcript and exhibits from that hearing, their respective briefs and the additional facts set forth in the instant stipulation represent a full and complete factual record.

The Teamsters contend that the disputed work should be assigned to the employees it represents on the basis of the collective-bargaining agreement, area practice, relative skills, and economy and efficiency of operation.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k), it must be satisfied that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for voluntary adjustment of the dispute.

As discussed above, the Teamsters' attorney threatened the Employer that he would advise the Teamsters to commence economic action against the Employer if it did not assign the disputed work to employees represented by the Teamsters rather than to employees represented by the Operating Engineers. There is no evidence of a voluntary method of resolving the jurisdictional dispute which would be binding on all of the parties.

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J.A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Collective-bargaining agreements

The Employer has collective-bargaining agreements with both the Operating Engineers and Teamsters. As previously indicated, the Teamsters' contract specifically covers the operation of a distributor truck. Although the Operating Engineers' contract generally covers the operation of all machinery used in the digging, quarrying, and processing of rock, sand and gravel, ready-mix concrete, asphalt, and kindred products and all other work in the State of Utah, it does not specifically cover the classification of distributor truck operator. Accordingly, we find that this factor favors assigning the work in dispute to employees represented by the Teamsters.

2. Employer's preference and past practice

The Employer, in accordance with its preference, has since 1980 assigned the work in dispute to employees represented by the Operating Engineers. We find that the

Employer's preference and past practice favor awarding the disputed work to employees represented by the Operating Engineers.

3. Area and industry practice

Employees represented by the Teamsters operate distributor trucks for companies that work on major heavy highway projects. Employees represented by the Operating Engineers operate distributor trucks for companies like the Employer who perform small metropolitan-type jobs, such as small subdivisions, parking lots, and driveways, where distributor trucks are needed on an irregular basis. Accordingly, we find that this factor favors the assignment of the work in dispute to employees represented by the Operating Engineers.

4. Economy and efficiency of operations

The Employer does not employ any employees represented by the Teamsters on its asphalt crew. Further, the disputed work constitutes only a small portion of the work performed on the Employer's jobsite and it is performed on an irregular basis for short periods of times. Consequently, the Employer would incur additional costs by hiring Teamsters-represented employees to perform the work in dispute. On the other hand, employees represented by the Operating Engineers already on the asphalt crew can perform other traditional work assignments when not performing the disputed work. Accordingly, we find that this factor favors the assignment of work to employees represented by the Operating Engineers.

5. Relative skills

The record discloses that employees represented by the Teamsters and Operating Engineers possess the required skills to operate a distributor truck. Employees represented by both Unions receive hazardous materials and safety training and obtain commercial drivers' license. Further, as noted above, employees represented by the Teamsters operate distributor trucks on large highway jobs and employees represented by the Operating Engineers operate distributor trucks on small metropolitan-type jobs. We, therefore, find that this factor does not favor an award of the disputed work to employees represented by either Union.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the Operating Engineers are entitled to perform the work in dispute. In reaching this conclusion, we find that, on balance, the factors of Employer's preference and past practice, area and industry practice, and economy and efficiency of operations have greater weight than the factor of collective-bargaining agreements which favors assignment to employees represented by the Teamsters. In making this determination, we are awarding the work to employees represented by the Operating Engineers, not to that Un-

ion or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. The employees of Geneva Rock Products, Inc. represented by Operating Engineers, Local Union No. 3 are entitled to perform the operation of distributor trucks during the asphalt paving procedure.

2. Teamsters Local No. 222 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Geneva Rock Products, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Teamsters Local No. 222 shall notify the Regional Director for Region 27 in writing whether it will refrain from forcing the Employer by means proscribed by Section 8(b)(4)(D) to assign the disputed work in a manner inconsistent with this determination.